

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN
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Wall Street Plaza
88 Pine Street – 21st Floor
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EVERCORN, INC.,

Plaintiff,

Index No. 1:30-cv-3024

- against -

COMPLAINT

M/V ELSABETH C, *in rem* CARGILL OCEAN
TRANSPORTATION (USA) and MELTEMI SHIPPING
LTD TRUST COMPANY COMPLEX, *in personam*,

Defendants.

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Plaintiff, by its attorneys, MARSHALL DENNEHEY WARNER COLEMAN &
GOGGIN, alleges upon information and belief, as follows:

FIRST: All and singular the following premises are true and constitute an admiralty or maritime claim within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

SECOND: At and during all the times hereinafter mentioned, Plaintiff had and now has the legal status and principal office and place of business stated in Schedule “A”, hereto annexed, and by this reference made a part hereof.

THIRD: At and during all the times hereinafter mentioned, Defendants had and now have the legal status and offices and places of business stated in Schedule “A”, and were and now are engaged in business as a common carriers of merchandise by water for hire, and owned,

operated, managed, chartered and/or otherwise controlled the vessel above named as common carriers of merchandise by water for hire.

FOURTH: This Court has personal jurisdiction over the Defendants, and venue is proper by reason of Defendants' regular and systematic contacts with the City and State of New York and by reason of the forum selection clauses set fourth in the contract of carriage, bill of lading and charter party which specify that disputes under said contracts of carriage are to be resolved in New York, including by way of arbitration., ..

FIFTH: At and during all the times hereinafter mentioned, the said vessel was and now is a general ship employed in the common carriage of merchandise by water for hire, and now is or will be during the pendency of this action, within this District and within the jurisdiction of this Honorable Court.

SIXTH: On or about the date and at the port of shipment stated in Schedule "A", there was shipped by the shipper therein named and delivered to Defendants and the said vessel, as common carriers, the shipment described in Schedule "A" then being in good order and condition, and Defendants and the said vessel then and there accepted said shipment so shipped and delivered to them, and in consideration of certain agreed freight charges thereupon paid or agreed to be paid, agreed to transport and carry the said shipment to the port of destination stated in Schedule "A", and there deliver the same in like good order and condition as when shipped, delivered to and received by them, to the consignees named in the bills of lading.

SEVENTH: Thereafter, the said vessel arrived at the port of destination, where it and Defendants made delivery of the shipment, but not in like good order and condition as when shipped, delivered to and received by them, but on the contrary, seriously injured and impaired in value by reason of the matter and things stated in Schedule "A", all in violation of Defendants'

and the said vessel's obligations and duties as a common carrier of merchandise by water for hire and as the result of gross negligence on the part of Defendants.

EIGHTH: Plaintiff was the shipper, consignee or owner or insurer of the shipments described in Schedule "A" and brings this action on its own behalf and as agent or trustee on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and Plaintiff is entitled to maintain this action.

NINTH: By reason of the premises, Plaintiff has sustained damages, as nearly as the same can now be estimated, no part of which has been paid although duly demanded, in the sum of \$347,844.44.

WHEREFORE, Plaintiff prays:

1. That process in due form of law may issue against Defendants citing them to appear and answer all and singular the matters aforesaid;
2. That if Defendants cannot be found within this District, then all of their property within this District as shall be described in Schedule "A", be attached in the sum of \$347,844.44, with interest thereon and costs, the sum sued for in this Complaint;
3. That Judgment may be entered in favor of Plaintiff against Defendants for the amount of Plaintiff's damages, together with interest and costs and the disbursements of this action;
4. That process in due form of law according to the practice of this Court in causes of admiralty and maritime claims, may issue against said vessel, her engines, etc., and that all persons having or claiming any interest therein be cited to appear and answer under oath, all and singular the matter aforesaid, and that this Court will be pleased to pronounce judgment in favor of Plaintiff for its damages as aforesaid, with interest, costs and disbursements, and that the said vessel may be condemned and sold to pay therefore; and

5. That this Court will enforce the parties' agreements to resolve disputes under the contracts of carriage in New York including New York arbitration pursuant to 9 U.S.Code Sections 1-15, the United States Arbitration Act and grant to Plaintiff such other and further relief as may be just and proper.

Dated: New York, New York
April 14, 2020

MARSHALL DENNEHEY WARNER
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Edward C. Radzik

BY:

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TO: Cargill Ocean Transportation (USA)
500 Frank W. Burr Blvd.
Teaneck, New Jersey 07666

Meltemi Shipping Ltd Trust Company Complex
c/o Lemissoler Navigation Co L, Eleni Court
17-21B, Agias Zonis Street
3027 Limassol, Cyprus

SCHEDULE A**Plaintiff's Legal Status and Office and Place of Business:**

Plaintiff, Evercorn, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with an office and place of business at 2001 South First Street, Suite 201, Champaign, IL 61820, and was at all material times herein was the subrogated insurer of the owner of the shipment which forms the subject of this action.

Defendant's Legal Status and Office and Place of Business:

Defendant, Cargill Ocean Transportation (USA). is a corporation or other legal entity organized and existing under and by virtue of the laws of one of the states of the United States with an office and place of business 500 Frank W. Burr Blvd. Teaneck, New Jersey 07666,, and was and still is an ocean carrier and issuer of the bills of lading for the shipment which forms the subject of this action.

Defendant, Meltemi Shipping Ltd Trust Company Complex, is a corporation or other legal entity organized and existing under and by virtue of the laws of a foreign sovereign with an office and place of business in c/o Lemissoler Navigation Co L, Eleni Court, 17-21B, Agias Zonis Street 3027 Limassol, Cyprus, and was and still is an ocean carrier of the shipment which forms the subject of this action and the registered owner of the vessel, M/V Elisabeth C.

Vessel	:	<i>M/V ELSABETH C</i>
Shipment	:	Yellow Corn in Bulk shipped from Westwego, Louisiana
Port of Loading	:	Westwego, Louisiana
Shipper	:	Shipper's Civil Engineers Limited (Woven Unit)
Bills of Lading Nos.	:	
Consignee	:	Japan Corn Starch Co. Ltd.
Port of Discharge / Destination	:	Kinuura, Japan
Nature of Loss / Damage	:	Wet and Mold Damage to Shipment During Transit

Plaintiff's Monetary
Damages : \$347,844.44

MDWCG File No. : 40929.00102